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March 5, 2001

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VIA COURIER SERVICE

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

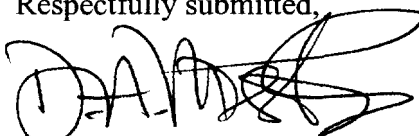
**Re: Notice of *Ex Parte* Presentation by Global Metro Networks
CC Docket No. 00-217**

Dear Secretary Salas:

Pursuant to sections 1.1206(b)(1) and (2) of the Commission's Rules, Global Metro Networks (GMN), by its attorneys, submits this notice of a written *ex parte* presentation and an oral *ex parte* presentation to discuss receipt and the substance of the written material, in the above-captioned proceeding. The presentation, filed herewith, occurred on March 2, 2001 and was directed by electronic mail to Tom Navin of the Policy and Program Planning Division, Common Carrier Bureau.

Pursuant to sections 1.1206(b)(1) and (2), an original and two copies of this *ex parte* presentation (with enclosure) are provided for inclusion in the public record of the above-referenced proceeding. Please direct any questions concerning this filing to the undersigned.

Respectfully submitted,



Patrick J. Donovan
D. Anthony Mastando

Counsel for Global Metro Networks

Enclosure

cc: International Transcription Service
Steven F. Morris

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L. ASODE

Tom,

Thanks for agreeing to circulate the following request, as it is vitally important to Global Metro's ability to compete in SBC territory. Please do not hesitate to contact me for any additional information. I look forward to hearing from you soon. Regards,

-Tony

* * *

Per direction of Commission staff, Global Metro Networks, Inc. (GMN) hereby requests assistance from the Commission to obtain access to a document upon which SBC relied in its 271 application for Kansas and Oklahoma. The document is a Memorandum of Understanding between SBC and Metromedia Fiber Network Services, Inc. (MFNS or MFN) that apparently permits MFN to provide services to customers located in collocation space within SBC central offices. GMN is interested in obtaining access to customers within SBC central offices under the same terms and conditions as MFN. SBC denied GMN's numerous requests to view the document (even a redacted version) on the grounds that the document does not cover a "251/252" agreement. The Commission has jurisdiction to assist with resolution of this dispute pursuant to its authority to interpret the provisions of Sections 251 and 252 that require interconnection agreements to be filed with the states and made available to requesting carriers.

Background. GMN is a telecommunications carrier that is pursuing certification as a CLEC and IXC in a number of states and in Europe. GMN is concurrently engaged in negotiation and/or adoption of interconnection agreements with various ILECs, including SBC.

In reviewing SBC's recent Section 271 application, GMN discovered a reference to a Memorandum of Understanding executed on August 2, 2000 between SBC and MFN. SBC cited the agreement in support of the proposition that it provides interconnection to CLECs in accordance with sections 271(c)(2)(B)(i), 251 and 252. Specifically, in the Reply Affidavit of Rebecca Sparks, at ¶ 4, SBC states as follows:

MFNS urged the FCC to deny SBC's application for authority to offer interLATA services in Kansas and Oklahoma due to concerns regarding placement of Fiber Distribution Panels in SWBT central offices. However, MFNS has negotiated and signed a Memorandum of Understanding (MOU) with SBC, which allows MFNS' customers to receive their facilities in SWBT central offices. This agreed-to language indicates that SBC was, and is, striving to meet MFNS' needs and that MFNS accepted the terms agreed to by the parties.

The Sparks Reply Affidavit, at ¶¶ 20-27, also cites to the MOU to demonstrate that SBC provides collocation in the manner required by the Act:

MFNS' arguments and assertions are contradicted by their existing agreements with SBC. MFNS has negotiated and signed a Memorandum of Understanding

(MOU) with SBC, which allows MFNS' customers to receive their facilities in SBC central offices in the following regions: Illinois Bell Telephone Company; Indiana Bell Telephone Company, Inc.; Michigan Bell Telephone Company; Nevada Bell Telephone Company; Ohio Bell Telephone Company; Pacific Bell Telephone Company; Southern New England Telephone Company; Southwestern Bell Telephone Company; and Wisconsin Bell, Inc., d.b.a. Ameritech Wisconsin (SBC-13 STATE).

This MOU was entered into August 2, 2000, for a term of five years from the effective date of August 1, 2000. The MOU states that its intent is to help both parties "reach amicable resolution of certain business issues with regard to access to SBC-13 STATE Central Office entrance facilities (manholes and conduits)." This agreed-to language indicates that SBC was, and is, striving to meet MFNS' needs and that MFNS accepted the terms agreed to by the parties. . . .

SBC agreed to allow MFNS, at the request of a legitimate collocater for entrance facilities, to leave a fiber coil at the manhole to satisfy any CLEC's request for fiber to meet its collocation request. The agreement allows MFNS to connect directly to these CLECs. This arrangement, as stated in the MOU, allows MFNS to provide fiber to collocators in the central office when a CLEC orders entrance fiber. It is clear in the MOU that MFNS is acting as the collocator's sub-contractor or fiber provider. The MOU provides for alternate routes or arrangements when the manhole is exhausted. The parties agreed to commence development (if needed) and deployment of processes to implement the arrangement within thirty business days of the signing of the MOU. SBC continues to stand by this agreement . . .

Despite its best efforts, GMN has been unable to obtain access to this document. As early as January 11, 2001, GMN contacted SBC representatives to request the MOU. On or about January 17, and prior to the FCC's conditional grant of SBC's 271 application, GMN, through counsel, approached Tom Navin of the FCC's Common Carrier Bureau, as one of the staff responsible for addressing SBC's compliance with collocation obligations. GMN requested assistance in locating the MOU in the voluminous record of the proceeding. After searching, Mr. Navin reported that it was not in the record and suggested that GMN request the MOU from the SBC 271 contact person, Eddie Rodriguez. In addition, Mr. Navin stated that if SBC did not provide GMN a copy of the document, we should contact him again. Mr. Rodriguez orally denied GMN's request, stating that the MOU was not a public document and he would not provide it to GMN. Mr. Rodriguez even invited GMN to enter into its own side agreement with SBC. Instead, GMN requested, both orally and in writing, a copy of the MOU from the SBC negotiator assigned to it. On March 1, after several weeks of deliberation, GMN received SBC's formal denial of its request (by letter dated February 14) on the grounds that "such agreement entered into by SBC and MFN is not a 251/252 agreement subject to 251(i) requirements. As such, SBC is not required to file the agreement or make it available to

Certified Local Exchange Carriers." GMN again contacted Mr. Navin, who requested that counsel explain the matter in an e-mail to be circulated among the staff.

Request for Assistance. SBC's own description of the MOU in the Sparks Reply Affidavit acknowledges that the agreement concerns matters directly linked to its section 271, 251 and 252 obligations. To assert now that the MOU does not cover interconnection and collocation (sections "251/252") stretches credulity. Further, the MOU appears to create more than a mere understanding between the parties, but to constitute a *de facto* interconnection arrangement. These non-public side agreements are especially troubling to a new carrier like GMN that would like to exercise its right to nondiscriminatory access to SBC facilities by adopting pre-existing agreements with other carriers. SBC's public reliance on the terms of the MOU should also subject it to review by the public-having "opened the door" in a sense.

For all the reasons discussed above, GMN renews its request for Commission assistance to obtain the Memorandum of Understanding executed on August 2, 2000 between SBC and Metromedia Fiber Network Systems, Inc.

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